IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5727 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMIBEN, D/O MANORBHAI GOPALBHAI
Versus
CIRCLE OFFICER, KAMREJ AND OTHERS

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Appearance :
MR PJ VYAS for the Petitioner
MR HEMANT MAKWANA, ASST. GOVERNMENT PLEADER for Respondent Nos.1 and 2
MR RR MARSHALL for Respondent Nos.3 to 7

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 26/06/2007

ORAL JUDGMENT

1. Mr.P.J.Vyas, learned advocate for the petitioner invited attention of the Court to the facts of the case, which are as under:

1.1 One Manorbhai Gopalbhai, father of the petitioner and also father of respondent Nos.3 and 5 to 7 was holding agricultural land bearing Block Nos.203 and 141. Respondent No.4, son of respondent No.3 – Gangaben (daughter of Manorbhai) was the tenant of Block No.141.

1.2 By Entry No.976, name of respondent No.3 – Gangaben was entered on 01.02.1985 as heir of said Monorbhai. Names of the petitioner and respondent Nos.5 to 7 were not entered as heirs of the deceased, which lead to filing of an application for entering names of the petitioner and respondent Nos.5 to 7 as heirs to Talati.

1.3 Entry No.1252 was made, to which respondent No.3 herein lodged objections. On objections being raised, the dispute was entered in the, 'Dispute Register'.

1.4 Later on, Circle Officer, Kamrej by his order dated 10.05.1993, cancel Entry No.1252. That order of the Circle Officer was challenged in Appeal Nos.52 and 53 of 1993 before Prant Officer, Olpad. The appeals were dismissed by order dated 07.02.1994. Against this order, an appeal was preferred before the Collector, who partly allowed the appeal by order dated 04/23.11.1995. The Collector ordered to cancel Entry No.976, setting aside the order of the Prant Officer.

1.5 Respondent Nos.3 and 4 challenged order of the Collector in Revision being 76 of 1995 before the Secretary (Appeals). The said

revision application was allowed by order dated 05.10.2000, communicated on 13.10.2000. The Secretary was pleased to set aside the order of the Collector and ordered to retain Entry Nos.976 and 1205.

2. By present petition, the petitioner has challenged the order passed by the Secretary.

3. After the matter is heard at length, learned advocate Mr.Vyas for the petitioner submitted that the petitioner is constrained to file this petition because the petitioner apprehended that the findings recorded by the Secretary may prejudice the right of the petitioner in a pending suit, filed in the Court of learned Civil Judge (S.D.), Surat, wherein the petitioner has claimed 1/5 share in the property of her deceased father – Manorbhai.

3.1 Learned advocate Mr.Vyas invited attention of the Court to the relief prayed for in this petition, which is as under:

> "13. (A) to issue a writ of certiorari or any other appropriate writ, directions and/or orders quashing and setting aside the impugned order, Annexure - "D" and to restore the order of the Collector, Annexure - "C"."

3.2 Learned advocate Mr.Vyas also invited attention of the Court to ground Nos.(a), (b) and (c) of the petition, wherein the apprehension, mentioned hereinabove, is expressed. For ready perusal, ground Nos.(a), (b) and (c) are reproduced:

(a) There is an error of law apparent on the face of the record in as much as the Secretary (Appeals), while exercising the powers under the said Rules, has determined the genuineness (sic – genuineness) of the will made by the deceased and erroneously ordered to retain the entry no.976, which is made prior to the death of the deceased.

(b) There is an error of law apparent on the face of the record in as much as the Secretary (Appeals) has recorded a finding that the petitioner and the respondent nos.5 to 7 have released their rights and that the respondent no.3 alone is the heir to receive the property under the will. It is submitted that the respondent no.2 has exercised powers beyond the jurisdiction vested in him under Rule 108(6A) of the Rules. It is the civil court alone who could deal with the determination of the title to the lands and also the rights of the parties over the property held by the deceased.

(c) The Secretary (Appeals) has acted contrary to the ratio laid down by the Hon'ble High Court of Gujarat in the case of **Gotam Khatra and another vs. Parmar Kayabhai Bhimabhai** in Second Appeal No.488 of 1975 (dated. 5/5/1981) reported **18 Gujarat Law Times, p. 356**. Under the said decision, it is provided that if a party wants to relinquish the right in favour of the other person in an immovable property worth more than Rs.100/- then such a relinquishment, surrender or transfer should be by registered document. The petitioner submits that while certifying the entry no such registered documents are produced and as such the order of the Collector to cancel the entry no.976 and

also the entry no.1205 is just and proper. The petitioner submits that, therefore, the entry no.1252 made by the Talati by entering the names of all the five daughters as heirs of the deceased ought to have been ordered to be retained in the record."

4. The dispute between the parties is subjudice in a pending suit in the Court of learned Civil Judge (S.D.), Surat. The result of that suit will govern the rights of the parties. Hence in the present petition, no relief can be granted. However, at the request of the learned advocate for the petitioner, it is clarified that the Civil Court will decide the rights of the parties without being influenced by the observations made by any revenue authority including the Secretary in the order impugned. The observations made by the Secretary ergarding, 'the nature of property' – self acquired property and on the, 'validity of the will' – that the will is valid, etc. are of no consequence. The Civil Court will decide the rights of the parties on the basis of the evidence led before it and in accordance with law.

5. With these observations, the petition is disposed of. Rule is discharged with no order as to costs.

(RAVI R.TRIPATHI, J.)

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